

# Notice of Allowability

Application No.

10/696,501

Examiner

Jessica L. Reidel

Applicant(s)

NORTH ET AL.

Art Unit

3766

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Application filed 10/29/2003.
2. ☒ The allowed claim(s) is/are 1-58.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 04/04 06/04 03/06
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statements (IDS) submitted on April 12, 2004, June 25, 2004 and March 30, 2006 have been acknowledged and are being considered by the examiner.

### ***Election/Restrictions***

2. Claims 1, 20 and 40 are generic and allowable. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 5-7, 24-27 and 44-46 are no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim.

### ***Allowable Subject Matter***

3. Claims 1-58 are allowed.
4. The following is an examiner's statement of reasons for allowance:

Bradley (U.S. 2003/0093134) discloses a system and method for patient control of the stimulation parameters of an implantable neurostimulator. The neurostimulator of Bradley delivers neurostimulation according to a plurality of programs during a programming session (see Bradley Abstract) and the program that allows for the best therapeutic ratio (TR) is chosen by the user wherein the TR is defined as the ratio of the maximum comfortable stimulation magnitude to the just-perceivable stimulation magnitude (see Bradley page 1, paragraphs 9-10). Bradley teaches that it is desirable to choose a program which results in the lowest power consumption if two programs result in similar TRs (see Bradley page 2, paragraph 13), however, Bradley does not disclose the steps of estimating a battery drain rate for each of the programs based on the parameters for that program and presenting battery longevity information for each of the programs to a user based on the battery drain rates.

Snell et al. (U.S. 6,1008,579) (herein Snell) teaches that it is known in the art to interrogate an already implanted and programmed device with an external programmer or equivalent in order to determine a realistic time remaining to a recommended replacement time (RRT) of the battery (see Snell Abstract and column 3). Snell, does not however, teach the steps of directing an implantable device to deliver stimulation according to a plurality of programs during a programming session, wherein each of the programs includes parameters which define stimulation for that program, estimating a battery drain rate for each of the programs based on the parameters for that program, and presenting battery longevity information for each of the programs to a user based on the battery drain rates.

Malek et al. (U.S. 2003/0171789) (herein Malek) teaches that it is known in the art to send parameter settings, patient diagnostic data, system diagnostic data (such as battery status and estimated longevity of an implant) and data on device usage from an implantable device to an external programmer during device programming (see Malek page 3, paragraph 33). Malek, does not however, teach the steps of directing an implantable device to deliver stimulation according to a plurality of programs during a programming session, wherein each of the programs includes parameters which define stimulation for that program, estimating a battery drain rate for each of the programs based on the parameters for that program, and presenting battery longevity information for each of the programs to a user based on the battery drain rates.

The references of the prior art fail to show or teach all of the Applicant's claimed invention and fail to show or teach any obviousness type improvement over the prior art and as a result, the Examiner deems these claims and their depending claims to be allowable over the prior art.

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue


Art Unit: 3766

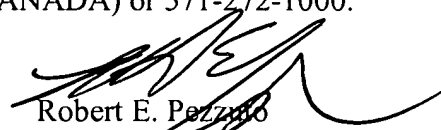
fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica L. Reidel whose telephone number is (571) 272-2129. The examiner can normally be reached on Mon-Thurs 8:00-5:30, every other Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jessica L. Reidel  
Examiner  
Art Unit 3766  
07/14/06

  
Robert E. Pezzuto  
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